

Other presenters at the Aug. 31, 2015, meeting were Gary Duncan, staff with the Public Service Commission, and Rob Ferris, Vision Net's chief executive officer and a member of the governor's Main Street Montana Key Industry Network for interconnectivity and telecommunications.

Gary Duncan reviewed the Public Service Commission's limited regulatory role related to broadband and noted that the PSC primarily had responsibility for designating whether local telecommunication carriers are eligible for federal grants. He provided an 11-year tally¹³ of federal funds received by Montana's incumbent local exchange carriers (like Blackfoot Telephone Cooperative, Inc.) and by Competitive Local Exchange Carriers (like Mid-Rivers). From 2004 to 2014, the total for high cost federal support amounted to \$900.4 million. His presentation included updates on how federal disbursements had evolved over time.

Rob Ferris described the work of Vision Net as a business-support middle mile connector serving to connect broadband providers in Montana with national and international connectors. He also reviewed the activities of the Main Street Montana project and the key industry network effort to improve economic development in the state. He noted that some problems had developed in efforts to map where technologies were available and at what speeds because of concerns that proprietary information might be made public. He described the difficulties of determining whether the cost of deployment is a general good or more specific to a company wanting to have faster technology and how that impacts who would pay for the last mile. He also noted efforts of the Broadband group in the Main Street Montana Project.¹⁴

A request for information about funding sources at the Aug. 31, 2016, meeting resulted in a staff briefing paper¹⁵ that showed how various programs funded deployment in schools, libraries, hospitals, and elsewhere. At the Feb. 4, 2016, EAIC meeting representatives of Missoula and Bozeman discussed their city-specific efforts to build broadband access. School representatives noted the costs of broadband deployment for both large and small school districts.

The April 14, 2016, meeting featured information from two of Montana's more rural providers, Nemont Telephone Cooperative, Inc., headquartered in Scobey, and Mid-Rivers Communications. The presentation by the general managers of both firms focused on technological and regulatory challenges plus the basic challenge of serving a broad, sparsely populated area. Customers expect interoperability and being able to access service no matter where they are in Montana, according to the presenters. That means having continually updated technological devices and agreements with many of the nationwide

¹³ See <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/Aug-Sept-2015/broadband-duncan-psc.pdf>.

¹⁴ For 2016 recommendations of the broadband group, see a May 2016 Main Street Montana report, p. 12. Top priorities are: mapping of broadband assets in Montana, a request for the 2017 Legislature to put \$25 million in the next biennium toward projects in underserved areas and to encourage public-private investments, as examples: See http://mainstreetmontanaproject.com/Portals/44/ALL%20KEY%20INDUSTRY%20NETWORK%20RECOMMENDATIONS_6.pdf.

¹⁵ See "Access and Price are Key Aspects for Broadband" at: <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/Feb-2016/broadband-combined.pdf>.

cellular providers. The regulatory climate and shrinking availability of government subsidies complicates not only the updating requirements but expansion capabilities. As one slide in the presentation noted, "Without support there is absolutely no business case to build and operate rural wireless networks."¹⁶

■ ***Economic Development in Montana***

Interest in how economic development funds have been spent by the state and federal government resulted in presentations at meetings in September 2015 and again in February 2016. The committee was interested, in part, about how much money had been spent on what types of projects.

■ ***Alcohol Industry Prospective Legislation***

At the EAIC's initial meeting in June 2015 and again in June 2016 the committee heard about efforts within the alcohol industry to address conflicting goals among its stakeholders regarding expansion or revision of how the industry operates. Industry representatives generally indicated in June 2015 an interest in working with their counterparts to develop a mutually agreeable approach to changes in statutes regulating the industry. At the June 22, 2016, meeting a consultant hired by industry representatives in late 2015¹⁷ to facilitate their meetings used a graphic to illustrate for the committee the difficulty of finding a solution. That pie-chart graphic showed that growth of one component took away from another area, making cooperation difficult.

Proposed Committee Bills

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The following summaries describe bill drafts adopted as committee bills by the EAIC:

- **LC 173 (LC9876)** – Proposes to move the interim monitoring of liquor laws and regulations from the Revenue and Transportation Interim Committee to the Economic Affairs Interim Committee. The rationale is that most of the EAIC members serve on standing committees for business and labor during session and, since most liquor industry bills are heard by those committees, the continuity over bill discussions and implementation can be maintained by EAIC oversight.

¹⁶ See slide marked "Regulatory Challenges" in "Rural Montana's Use of Broadband and Wireless: Struggles and Possible Solutions," April 14, 2016: <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/April-2016/EAIC-NemontMidRivers.pdf>.

¹⁷ For more information on the consultant, see a memo provided at the June 22, 2016, EAIC meeting: <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/June-2016/alcohol-coalition-overview.pdf>.

Issues

Air Ambulance Costs

Insurance Payments

Federal Law Complications

Based on the theory that federal law preempts state law if the federal government has “claimed the field” on a particular issue, many people in the air ambulance debate have claimed that the Airline Deregulation Act and accompanying federal court cases and Inspector General Opinions prevent states from imposing laws affecting air ambulance providers’ prices, routes, or services (other than medical requirements).

But preemption is not always clear cut, particularly if more than one federal law can be referenced. Some people suggest that the McCarran-Ferguson Act, which allowed states the rights to govern insurance, may be used as an argument against total preemption by the Airline Deregulation Act. Others question whether the Affordable Care Act carves out some exceptions, in this case by impacting regulations related to an insurer’s payment practices. Federal guidance¹⁸ issued April 20, 2016, included in frequently asked questions about the Affordable Care Act, some insight into how language in section 2719A of the Public Health Act is to be implemented in relation to emergency services. That section¹⁹ in brief says that an insurer

¹⁸ See pp. 4-5 of “FAQs about Affordable Care Act Implementation Part 31, Mental Health Parity Implementation, and Women’s Health and Cancer Rights Act Implementation,” April 20, 2016.

¹⁹ (b) Coverage of emergency services

(1) Scope. If a group health plan, or a health insurance issuer offering group health insurance coverage, provides any benefits with respect to services in an emergency department of a hospital, the plan or issuer must cover emergency services (as defined in paragraph (b)(4)(ii) of this section) consistent with the rules of this paragraph (b).

(2) General Rules. A plan or issuer subject to the requirements of this paragraph (b) must provide coverage for emergency services in the following manner –

(i) without the need for any prior authorization determination, even if the emergency services are provided on an out-of-network basis;

(ii) without regard to whether the health care provider furnishing the emergency services is a participating network provider with respect to the services;

(iii) if the emergency services are provided out of network, without imposing any administrative requirement or limitation on coverage that is more restrictive than the requirements or limitations that apply emergency services received from in-network providers;

(iv) if the emergency services are provided out of network, by complying with the cost-sharing requirements of paragraph (b)(3) of this section; and

(v) without regard to any other term or condition of the coverage, other than –

(A) the exclusion of or coordination of benefits;

(B) an affiliation or waiting period permitted under part 7 of ERISA ...; or

(C) applicable cost-sharing.

cannot require prior authorization and must pay out-of-network providers at in network rates. However, there is an opportunity for the provider to balance bill.

Terms referenced in that section of law and variations of them were part of the work group discussions led by the State Auditor's Office. These included:

- "reasonable" in terms of the amount paid by an insurer before the patient became responsible for the balance bill;
- "usual, customary and reasonable"; or
- an amount that would be paid under Medicare for the emergency service.

The term used in the eventual bill draft discussed by the work group was "fair market value," described as "the value of the services provided as agreed upon by the parties or as determined by the independent reviewer based upon the factors provided in the dispute resolution process.

Current State Law Scope

(3) Cost-sharing requirements –

(i) Copayments and coinsurance. Any cost-sharing requirement expressed as a copayment amount or coinsurance rate imposed with respect to a participant or beneficiary for out-of-network emergency services cannot exceed the cost-sharing requirement imposed with respect to a participant or beneficiary if the services were provided in-network. However, a participant or beneficiary may be required to pay, in addition to the in-network cost sharing, the excess of the amount the out-of-network provider charges over the amount the plan or issuer is required to pay under this paragraph (b)(3)(i)... [balance bill]